

RESOLUTION NO. 2015 – 08

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY  
TO THE COMMUNITY DEVELOPMENT COMMISSION  
AS THE NATIONAL CITY REDEVELOPMENT AGENCY  
AUTHORIZING THE CHAIRMAN TO EXECUTE A SETTLEMENT AGREEMENT  
BETWEEN THE SUCCESSOR AGENCY AND ROSENOW SPEVACEK GROUP, INC.,  
TO RESOLVE PENDING ARBITRATION

WHEREAS, On February 20, 2007, the now dissolved Community Development Commission of the City of National City as the National City Redevelopment Agency ("CDC") entered into an Agreement with Rosenow Spevacek Group, Inc. (RSG) for the CDC's 2007 Redevelopment Plan Amendment; and

WHEREAS, the 2007 Redevelopment Plan Amendment was prepared by RSG and eventually adopted by the CDC in July of 2007; and

WHEREAS, on or about September 2007, the Community Youth Athletic Center initiated a legal challenge against the 2007 Redevelopment Plan Amendment (the "CYAC Matter"), a reverse validation challenge to the 2007 Redevelopment Plan Amendment, incorporating alleged violations of the California Public Records Act, due process of law, and unconstitutional takings; and

WHEREAS, the CYAC Matter was dismissed, appealed, remanded, tried, appealed, and remanded over the years between 2007 and 2015; and

WHEREAS, during this time frame, the District Court of Appeal ultimately affirmed the invalidation of the 2007 Redevelopment Plan Amendment, and found a violation of the California Public Records Act based upon records not being furnished by RSG for disclosure; and

WHEREAS, In April 2015, the trial court entered judgment in the CYAC matter, awarding fees in the amount of \$2,016,249.87; and

WHEREAS, in or about 2011, the City and CDC commenced arbitration proceedings seeking damages against RSG arising out of work performed by RSG pursuant to its contract with the CDC (the "Arbitration Proceedings"); and

WHEREAS, during the pendency of the Arbitration Proceedings, the parties engaged in two lengthy negotiations conducted at two mediation sessions over many months; and

WHEREAS, as a settlement of the Arbitration Proceedings ("Settlement"), RSG has agreed to pay the City and CDC the balance of their \$2,000,000 policy limits that remain after payment has been made of all legal fees and costs incurred by RSG in connection with the defense and settlement of the Arbitration Proceedings, currently estimated at about \$1.8M; and

WHEREAS, on June 17, 2015, the Oversight Board met, and considered the Settlement as it was approved by the Successor Agency to the CDC ("Successor Agency") on June 16, 2015, and recommended for approval by staff, along with all evidence presented, both in favor and against the Settlement, if any; and

WHEREAS, approval of the Settlement requires approval of the Oversight Board of the Successor Agency and DOF approval before it becomes final.

NOW, THEREFORE, BE IT RESOLVED by the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency as follows:

**Section 1.** The foregoing recitals are true and correct, and are a substantive part of this Resolution.

**Section 2.** The Oversight Board has reviewed and hereby approves the Settlement Agreement between the Successor Agency to the Community Development Commission as the National City Redevelopment Agency and Rosenow Spevacek Group, Inc., to resolve the pending Arbitration Proceedings, a true and correct copy of said Settlement Agreement to be retained as a public record by the City Clerk of the City of National City.

**Section 3.** The Chairman of the Successor Agency, or his designee, is hereby authorized and directed to execute the Settlement Agreement and take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution on behalf of the Oversight Board;

**Section 4.** The Oversight Board concurs with the Successor Agency's determination that approval of this Resolution does not represent a "project" for purposes of CEQA, as that term is defined by Guidelines section 15378, because this Resolution is an organizational or administrative activity that will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

**Section 5.** The Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

**Section 6.** Pursuant to California Health and Safety Code Section 34179(h), the State of California Department of Finance may review Oversight Board action; therefore, this Resolution shall be effective on the date five (5) business days after its adoption, absent and pending any request for review by the State of California Department of Finance.

--- SIGNATURE PAGE TO FOLLOW ---

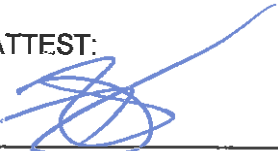
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PASSED and ADOPTED this 17<sup>th</sup> day of June, 2015.


AYES: Fellows, Desrochers, Perri, Hentschke  
NOES: None  
ABSENT: Carson, Morrison, McCarthy  
ABSTAIN: None

  
\_\_\_\_\_  
Ron Morrison, Chairman

ATTEST:

  
\_\_\_\_\_  
Brad Raulston, Executive Director  
Secretary to the Oversight Board

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Oversight Board Counsel  
Edward Z. Kotkin, Esq.  
Law Offices of Edward Z. Kotkin

**SETTLEMENT AGREEMENT AND MUTUAL  
GENERAL RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE OF ALL CLAIMS (hereinafter "Agreement") is made and entered into by and between the parties hereto, namely, THE CITY OF NATIONAL CITY and what was formerly the COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF NATIONAL CITY and is now the SUCCESSOR AGENCY TO THE COMMUNITY DEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY (collectively the "CITY") on the one hand and ROSENOW SPEVACEK GROUP, INC. ("RSG"), on the other hand. CITY and RSG are sometimes hereinafter referred to collectively as the "Parties".

**RECITALS**

This agreement is made with reference to the following facts:

A. In or about 2011, CITY commenced arbitration proceedings against RSG arising out of work performed by RSG pursuant to its contract with the Community Development Commission of the City of National City dated February 20, 2007 (the "Arbitration Proceedings").

B. In the Arbitration Proceedings, CITY alleged that RSG negligently performed its contractual obligations and that in the result, the San Diego Superior Court invalidated National City's Redevelopment Plan in an action filed by Community Youth Athletic Center and others (collectively "CYAC") against the City of National City and National City Community Development Commission (collectively "CDC") (hereinafter the "Underlying Action"). The Superior Court's judgment invalidating the

Redevelopment Plan in the Underlying Action was affirmed by the Court of Appeal in 2013.

C. In the Arbitration Proceedings, CITY sought compensatory damages from RSG, representing (1) attorney fees totaling \$2,016,249.87 awarded against CDC and in favor of CYAC and other Interested Parties in the Underlying Action; (2) attorney's fees totaling \$1,064,574.62 incurred by the CDC in defending the Underlying Action; (c) attorney's fees totaling \$110,029.49 as of February 28, 2015, with additional attorney's fees incurred but not yet paid by CITY to prosecute the Arbitration Proceedings; and (4) compensatory damages representing (a) loss of revenues caused by disruption of improvement and development within the City which was dependent upon validation of the Redevelopment Plan Amendment, in the form of increased sales tax revenue, increased property tax revenue, the value of developer-provided infrastructure improvements, etc., of no less than \$20,000,000.00; and (b) additional expenses incurred by CITY related to bonding expenses caused by the invalidation proceedings in the amount of no less than \$9,100,000.00. RSG denied liability for all of the claims and damages alleged by CITY.

D. Following a period of due diligence and formal discovery, it was determined that RSG was insured by National Union Fire Insurance Company of Pittsburgh, PA under Miscellaneous Professional Liability Policy No. 042923310 (the "National Union Policy") with aggregate policy limits of \$2,000,000.00 reduced by claims expenses. The legal fees and costs incurred by RSG in defending the Arbitration Proceedings, have been paid from the proceeds of the National Union Policy, thereby reducing the available policy limits. That diligence and discovery by CITY revealed that it is in the best interest of CITY to settle and resolve the dispute on the terms contained herein.

E. During the pendency of the Arbitration Proceedings, the Parties engaged in two lengthy negotiations conducted at two mediation sessions over many months. The Parties have agreed to settle the disputes between them subject to the terms and conditions set forth in the agreement.

NOW THEREFORE and in consideration of the foregoing facts and the mutual covenants, conditions, promises and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. AGREEMENT:

1.1 Settlement Payment:

CITY shall be paid the balance of the \$2,000,000 policy limits in the National Union Policy that remain after payment has been made of all legal fees and costs incurred by RSG in connection with the defense and settlement of the Arbitration Proceedings. Payment shall be made to CITY within 45 days after signature of this agreement by all Parties, or within 14 days after all governmental approvals to this settlement agreement have been procured, whichever event occurs last. The amount of the settlement proceeds is presently estimated to be slightly more than \$1,830,000, but the final amount of the settlement proceeds will be confirmed by RSG within 10 days after signature of this agreement. RSG shall, if requested, provide satisfactory proof of the legal fees and costs incurred in connection with the defense of the arbitration proceedings, but shall not be required to waive the attorney-client privilege with respect to the contents of its attorneys' invoices.

**1.2 Conditional Settlement:**

This settlement is conditional upon approval of all of its terms and conditions by all necessary governmental bodies or agencies, including, but not limited to, CITY, the Oversight Board, and the California Department of Finance.

**1.3 Dismissal of the Arbitration with Prejudice:**

The Parties agree that upon payment of the settlement proceeds, CITY shall immediately dismiss the arbitration proceedings against RSG with prejudice.

**1.4 Costs of Litigation:**

It is further agreed that the Parties to this agreement shall assume and bear their own costs and attorneys' fees as a result of, or in connection with, the arbitration and this settlement agreement.

**2. MUTUAL RELEASE PROVISIONS:**

**2.1 CITY'S Release of RSG:**

In consideration respectively of the agreements referred to in Section 1 hereof, CITY does hereby forever release and discharge RSG and any and all of its parent companies, affiliates, subsidiaries, agents, heirs, attorneys, servants, employees, predecessors, successors, assigns, and assignors, and its insurers and reinsurers, from any and all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, other than as may arise out of or relate to the breach of this settlement agreement by RSG.

**2.2 RSG Release of CITY:**

In consideration, respectively, of the agreements referred to in Section 1 hereof, RSG does hereby forever release and discharge CITY, and all of its agents, heirs,

attorneys, servants, employees, predecessors, successors, assigns, and assignors, from any and all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, other than as may arise out of or relate to the breach of this settlement agreement by CITY.

**2.3 Waiver of Civil Code Section 1542:**

It is the intention of the Parties that the foregoing mutual releases shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected herein above specified to be so barred; in furtherance of this intention the parties expressly waive any and all rights and benefits conferred upon them by provisions of Section 1542 of the California Civil Code, which are as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was separately bargained for. The Parties expressly consent that this release shall give the same full force and effect to unknown and unsuspected claims, demands, and causes of action, if any, as to those terms and provisions relating to claims, demands, and causes of action herein above specified.



3. MISCELLANEOUS:

3.1 Compromise:

The Parties acknowledge that this Agreement constitutes a compromise and settlement of disputed claims and nothing in this Agreement is or shall be treated, or construed or deemed as an admission by any Party of any liability or fault.

3.2 Further Assurances:

The Parties hereby agree to execute such other documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement.

3.3 Law:

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California.

3.4 Benefit and Burden:

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

3.5 Waiver and Amendment:

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended or modified only by a written agreement executed by all of the Parties.

3.6 Counterparts:

This Agreement may be executed in counterparts by the Parties and will become effective and binding upon the Parties only at such time as all of the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute one Agreement binding on all the Parties, notwithstanding that all Parties are

not signatory to the original or the same counterpart. Each of the Parties shall sign a sufficient number of counterparts so that each Party will receive a fully executed original of this Agreement. The Parties agree that a facsimile signature shall bear the same force and effect as an original signature, thus enabling the Parties to expeditiously obtain signatures of all Parties and their counsel. In the event, however, that a facsimile signature is used by any Party, that Party shall ensure that all other Parties receive the original document bearing that Party's original signature within five (5) days.

### 3.7 Gender and Tense:

Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine, feminine, and neuter genders shall be deemed to include the other. The term "person" shall include corporation, firm, joint venture, partnership, trust, or estate.

### 3.8 Entire Agreement:

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, fully supersedes all prior understandings, stipulations, representations, warranties, and agreements between the Parties, or any of them, pertaining to the subject matter hereof, and may be modified only by written agreement signed by all of the Parties hereto.

### 3.9 Captions and Interpretation:

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. No provision in this Agreement is to be interpreted for or against any Party because that Party or its legal representative drafted such provision.

**3.10 Independent Advice of Counsel:**

The Parties, and each of them, represent and declare that in executing this Agreement they rely solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by any other Party or by any person representing such other Party.

**3.11 Voluntary Agreement:**

The Parties, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof and that they sign the same freely and voluntarily.

**3.12 Authority to Execute Agreement:**

CITY and RSG and each of them, each warrant and represent that the individual persons executing this agreement are duly authorized to execute this agreement on behalf of the respective parties and in their respective capacities as indicated below.

**3.13 Assignment:**

Each of the parties hereby warrants, represents and agrees that it is the sole and lawful owner of all right, title, and interest in and to all of the respective claims which are referenced in the releases set forth above and they have not hereto voluntarily, by operation of law or otherwise, assigned or transferred or purported to assign or transfer to any person whomsoever, any such claims or any part or portion thereof. Each of the parties agree to indemnify and hold each of the other parties, harmless from any claim, demand, damage, liability, action, or cause of action, based on or connected with or arising in any manner out of any such assignment or transfer.

**3.14 Incorporation of Recitals:**

The Recitals to this Settlement Agreement are hereby incorporated into this Settlement Agreement by this reference.

**3.15 Further Assurances.**

All Parties agree to cooperate fully and execute any and all supplementary documents and take additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year written below.

**CLAIMANTS:**

Dated: May \_\_, 2015

CITY OF NATIONAL CITY


By \_\_\_\_\_

Its \_\_\_\_\_

**RESPONDENT:**

Dated: May 18, 2015

ROSENOW SPEVACEK GROUP, INC.

By 

Its President

APPROVED AS TO FORM:


Dated: May \_\_\_\_, 2015

MAZZARELLA & MAZZARELLA, LLP

By: \_\_\_\_\_  
Daral B. Mazzarella  
Attorney for Claimant CITY OF NATIONAL  
CITY

Dated: May 21, 2015

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:  \_\_\_\_\_  
Ernest Slome  
Attorney for Respondent ROSENOW  
SPEVACEK GROUP, INC.